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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,198	03/25/2004	Richard E. Forkey	P25-006	5997
34021	7590	03/26/2007		
GEORGE A. HERBSTER 40 BEACH STREET SUITE 303 MANCHESTER, MA 01944			EXAMINER BEN, LOHA	
			ART UNIT	PAPER NUMBER
			2873	

  

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/809,198

Applicant(s)

FORKEY ET AL.

Examiner

Loha Ben

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-21 is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 3-6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

The argument made by Applicants dated January 18, 2007 is found non-persuasive in that the meaning of the word "positive" in "positive seat", as argued over by Applicants on page 12 of the Remarks, is interpreted to mean "characterized by or displaying certainty" (as defined in The American Heritage Dictionary, Second College Edition). Therefore, the phrase "positive seat" defined by the optical element support means of claim 1 still reads on the seating characteristic as taught in McCrary'474, Hoshni et al (art cited in IDS dated March 25, 2004), Sudo et al, and Kobayashi et al, unless further property is **added at the end of claim 1**, such as the phrase – **even during autoclaving** – (found on page 3, line 16 of the specification).

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by McCrary'474 or Hoshino et al.

As now amended and broadly worded, claims 1 and 2 read on either of the above references. For Hoshni et al, vis-à-vis claims 1 and 2, reference is made to Fig. 9 (the radially inward portion of cylindrical part 2 and the caulking portion 8 are construed to correspond to the second support means of claim 1) and column 5, lines 51-54. For

Art Unit: 2873

McCrary'474, reference is made to elements 10b, 15, 18 and 20, where elements 15 and end portion of mount member 18 are construed to correspond to the second support means of claim 1).

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Sudo et al or Kobayashi et al.

As now amended and broadly presented, claim 1 reads on either Sudo et al or Kobayashi et al. In the analysis, numeral 38a, 38b or 38c, and element 30 of Fig. 8 of Sudo et al are the equivalent of the second support means of claim 1; and numerals 54 and 34, or numerals 62 and 44, of Fig. 5 of Kobayashi et al are interpreted to be the equivalent of the second support means of claim 1.

#### **Minor Informalities noted**

##### **In the Claims**

In claims 2, 8, and 15: on line 4, "conform" should be -- conforms --.

In claim 4: on line 5, after "housing", -- means -- should be inserted.

##### **In the Specification**

Page 11: bottom line, "43" should be -- 44 --.

Page 13: line 4, "43" should be -- 44 --.

##### **In the Drawings**

In Fig. 10, numeral "43" should be -- 44 --, since in Figs. 3 and 7, "43" represents a doublet lens, not a spacer.

#### **Allowable Subject Matter**

Claims 7-21 are allowable. The patentability of independent claim 7 centers on the second plastically deformed support means and its function recited therein.

Independent claims 14 and 21 carry each a scope narrower than that of claim 7 due to additional limitations noted therein.

Claims 3-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Communication**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Loha Ben whose telephone number is (571) 272-2323. The examiner can normally be reached on M-SAT, generally between 12:00 p.m. to 8:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack, can be reached on M-F, at (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2873

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 20, 2007

A handwritten signature in black ink, appearing to read 'Loha Ben', with a long horizontal flourish extending to the right.

**Loha Ben**  
**Primary Examiner**